

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION  
135 STATE STREET, DRAWER 33  
MONTPELIER, VT 05633-6301  
TEL: (800) 416-2010 or (802) 828-2480 (Voice/TDD)  
FAX: (802) 828-2481  
E-Mail: [human.rights@hrc.state.vt.us](mailto:human.rights@hrc.state.vt.us)

---

INVESTIGATIVE REPORT

---

PA00-0017

CHARGING PARTY: Joseph Stetson  
RESPONDENT: Burlington Police Department  
CHARGE: Discrimination in Public Accommodations / Disability

SUMMARY OF CHARGE: On January 18, 2000, Joseph Stetson filed a Charge of Discrimination that the Burlington Police Department discriminated against him, when he attempted to file a complaint at the Department, because of his hearing loss. He specifically alleges that the Burlington Police Department discrimination by failing to train dispatchers to communicate with people who are hard of hearing; by failing to provide telephones with volume controls in its reception areas; by responding in a hostile manner when Mr. Stetson attempted to file a complaint at the Police Department office; and by failing to respond to his complaints.

SUMMARY OF RESPONSE: On February 15, 2000, the Burlington Police Department responded to the Charge by admitting that it did not have telephones with volume controls in its reception areas at the time of Mr. Stetson's complaint, but stating that it has since installed such telephones. The Department asserts that it has properly trained its dispatchers regarding disability issues. The Department denies treating Mr. Stetson in a hostile manner, and asserts that it repeatedly attempted to contact Mr. Stetson to address his complaints.

PRELIMINARY RECOMMENDATION: This investigative report recommends that the Human Rights Commission find that there are **reasonable grounds** to believe that the Burlington Police Department discriminated against Mr. Stetson by not providing

accessible telephones at the time of his complaint. However, such telephones have subsequently been installed. This report also recommends that the Human Rights Commission find reasonable grounds to believe that the Burlington Police Department discriminated against Mr. Stetson by failing to respond to his complaints according to its published procedures.

#### **SUMMARY OF INVESTIGATION:**

##### **Interviews:**

Joseph Stetson, 1/16/01

~~John Sonnick, 1/9/01~~

Emmet Helrich, 1/22/01

Keri Darling, 1/29/01

##### **Documents:**

Complaints filed by Mr. Stetson with the Burlington Police Department, 1/4/00

Charge of Discrimination, 1/18/00

Response to Charge by Burlington Police Department, 2/15/00

Response to Request for Information by Joseph Stetson, 3/9/00

Documents provided by Joseph Stetson, 3/9/00

Response to Request for Information by Burlington Police Department, 3/16/00

Burlington Police Department's Citizen's Complaint Form, 1/9/01

Burlington Police Department's Citizen's Guide to Making Inquiries, Complaints & Commendations, 1/9/01

Burlington Police Department Memo re: Bureau of Internal Affairs Process, 1/9/01

##### **Site Inspection:**

Site Inspection of Burlington Police Department Headquarters, 1/9/01

##### **Background**

Joseph Stetson has a profound hearing impairment due to nerve damage. He has no hearing in the middle range, and very little residual hearing. Mr. Stetson wears a hearing aid, which provides some assistance, but he relies primarily on speech reading for communication. Telephone communication is especially difficult for Mr. Stetson. He does not have a telephone at home, and does not use TTY/TDD.

The Burlington Police Department (hereafter BPD) headquarters, constructed in 1995, has two entrances. The Administrative Services entrance, on the south side of the building, has a small entryway, with a window that is staffed during regular business hours. The Uniform Services entrance, on the north side of the building, has a similar small entryway, with a window that is staffed 24 hours, except when the officer on duty steps away briefly from the window. In the entryways are telephones used only for internal communication in the building. When there is no one at the windows, patrons may use the telephone to get assistance. Each telephone has a sign with operating instructions. Emmet Helrich is a Lieutenant with the BPD. He heads the Detective Bureau, and oversees internal investigations. John Sonnick is Deputy Chief of Administrative Services for the BPD.

Vermont's E-911 dispatch system, headquartered in Williston, serves all Vermont law enforcement agencies. It is run independently from the BPD and other police departments. When E-911 receives a call requiring the services of the BPD, the E-911 dispatcher contacts the BPD dispatcher for services. The E-911 office is equipped with TTY.

### **Incident of July 6, 1999**

Mr. Stetson reported the following incident. On July 6, 2000, Mr. Stetson was on Church St. in Burlington, around 5:30 p.m., and saw a dead bat in front of a store. Mr. Stetson went to a pay phone and telephoned 911 to report the animal. A male dispatcher with a deep voice answered. Mr. Stetson told the dispatcher that he is hearing impaired, and then gave the information about the bat. The dispatcher replied in a rapid, staccato

voice, and Mr. Stetson was unable to understand anything he said. Mr. Stetson repeated the information and hung up the telephone. Mr. Stetson did not give his name to the dispatcher. Mr. Stetson is unaware if the BPD ever responded to his report.

The BPD has no record of a phone call reporting a dead animal on July 6, 1999.

### **Incident of July 14, 1999**

Mr. Stetson reported the following incident: On July 14, 2000, Mr. Stetson went to the BPD headquarters around 5:00 p.m. to get a complaint form, in order to report his communication problem with the dispatcher on July 6. He first went to the entrance at the southeast corner of the building. When he arrived, there was no one at the front desk. Mr. Stetson used the telephone in the entryway, to get someone to assist him. The telephone did not have a volume control. A woman answered the telephone, and told him to go to the entrance at the other end of the building to get a complaint form. Mr. Stetson had a great deal of difficulty hearing the woman.

Mr. Stetson then went to the entrance at the other side of the building, and approached the service window. There was no one sitting at the desk, but there were several officers walking around on the other side of the window, who did not acknowledge Mr. Stetson's presence. There was a telephone next to the service window, with a sign saying to use the phone to get service. Again, the telephone had no volume control. Mr. Stetson picked up the phone, said that he was there, and hung up. After Mr. Stetson arrived at this entrance, another person entered. A middle-aged, balding, stocky officer came to the window and helped the other person before talking to Mr. Stetson. After helping him, the officer turned to Mr. Stetson and asked in a tone of voice that Mr.

Stetson found rude, "Are you finished?" Mr. Stetson stated that he had not yet started. The officer threw up his hands and walked away without helping Mr. Stetson.

Mr. Stetson got the attention of a second officer, probably Sgt. Scott Davidson. Mr. Stetson said he wanted to file a complaint. The officer interrupted Mr. Stetson, and spoke in a rapid manner that Mr. Stetson found difficult to understand. Mr. Stetson stated again that he wanted a complaint form, and tried to explain the incident of July 6. The officer gave Mr. Stetson a Sworn Statement form, and told him to fill it out at the counter and give it back to him immediately, so that he could evaluate it. Mr. Stetson looked at the form, and pointed out to the officer that it needed to be notarized. Mr. Stetson also stated that he wanted to take time filling out the form to make sure it was correct. Mr. Stetson refused to give the complaint form to the officer, and asked for a second complaint form. The officer initially refused to provide one. Mr. Stetson also complained that the form he was given did not seem appropriate for filing a complaint. When another person arrived, the officer gave him a second form. Mr. Stetson believed that the officer, because of the difficulty the officer was having communicating with him, was trying to get rid of him.

Mr. Stetson did not believe that either of the officers with whom he spoke was initially aware that he had a hearing impairment, although he might have mentioned his hearing impairment to the second officer. Mr. Stetson also found that the window set-up at the front desk, with only a small hole to speak through, made communication difficult.

After Mr. Stetson's visit, Sgt. Davidson e-mailed Lt. Helrich that a man had come in with a complaint, but did not identify himself by name. He reported that the complainant might later send in a complaint form. Lt. Helrich later received the

complaint form from Mr. Stetson, and connected the form with the unnamed man. Lt. Helrich spoke to other officers on duty at the time. No one other than Sgt. Davidson recalled the incident with Mr. Stetson.

The BPD acknowledged that on July 14, 1999 the telephones in the entryways did not have volume controls.

---

### **Incident of July 17, 1999**

Mr. Stetson reported the following incident. On July 17, 1999, after work, Mr. Stetson went to a bar in Burlington. He had two beers over the course of more than 3 hours. After midnight, he drove home along Colchester Ave, toward Winooski. He moved his car out of his lane to avoid hitting two pedestrians. He was then pulled over by a female officer in a BPD car. The officer told Mr. Stetson that he was weaving, and asked for his license and registration. Mr. Stetson informed the officer immediately that he had a hearing impairment and depended on speech reading. Mr. Stetson then tried to explain his driving maneuver. The officer told Mr. Stetson to get out of the car and face the flashing lights of the police car. The officer also shined a flashlight in his face, making it impossible for him to speech read. According to Mr. Stetson, the officer thought that he was being uncooperative, and called for a backup. The officer asked Mr. Stetson to perform some actions, but he was unable to understand her. He finally determined she was trying to test his sobriety, and asked them to give him a breath alcohol level test. The officers performed the test, and let Mr. Stetson go.

## **Submission of Complaints to BPD**

Mr. Stetson submitted three complaints to the BPD, notarized and dated July 23, 1999. All three complaints are on the "Burlington Police Department Sworn Statement" form. Mr. Stetson sent the complaints by mail to BPD Chief Alana Ennis. The BPD received these complaints in an envelope postmarked July 26, 1999. The first complaint addresses Mr. Stetson's concerns about the incident of July 6, 1999, when he was unable to understand the dispatcher when reporting the dead bat on Church St. The second complaint addresses Mr. Stetson's experience at the BPD on July 14, 1999, including the lack of volume controls and the behavior of the officers, which Mr. Stetson believed to be hostile, and based on his hearing impairment. The third complaint addresses the traffic stop of July 17, 1999, and the behavior of the officer regarding his hearing impairment.

## **Complaint Form and BPD Complaint Intake Procedure**

The BPD's "Citizen's Guide to Making Inquiries, Complaints and Commendations" states, in part:

A complaint may be made by letter, telephone, or in person. A formal complaint may be made to any member of the Police Department who will then immediately refer information to a supervisor. Serious complaints, such as criminal misconduct or violations of civil rights, will be referred to the Bureau of Internal Affairs, which will complete a thorough investigation. Other complaints, such as allegations of rudeness or improper vehicle operation, may be investigated by the on duty supervisor. In either situation, the complainant will be notified of the disposition. . . . If your complaint or commendation was made in writing, you will be notified within seven business days of its receipt. (Guide)

According to a BPD memo on Internal Affairs Process, dated August 7, 1996, when a citizen makes a complaint, they are to be given a "Citizen Complaint Form," which is to be available at all times. The memo outlines the procedures described in the

Guide, but states that "This policy does not apply to minor misunderstandings which can be quickly resolved with an explanation of State law and/or Department policy." The memo states that "Internal investigations shall normally be completed within thirty days," with possible extensions to "a maximum time limit of ninety days." The memo also states that "The complainant shall be advised when their complaint is received" and, "When reasonable, the complainant will be periodically informed as to the status of the complaint. . . . The Chief of Police or his/her designee shall make reasonable efforts to notify the complainant, in writing, of the outcome of the investigation." According to Deputy Chief Sonnick, the BPD attempts to resolve complaints within 2-3 weeks after they are submitted. The Complaint Form does not need to be notarized.

The Sworn Statement form given to Mr. Stetson is not the normal BPD complaint form. According to Lt. Helrich, the Sworn Statement form asks more specific questions, and so it is sometimes more helpful for getting information than the Complaint Form, which only asks for a general narrative of the complaint, even though some of the questions on the Sworn Statement form are not relevant to a complaint. Lt. Helrich stated that the standard Complaint Form should have always been available at both front desks, though sometimes they run out of forms. Deputy Chief Sonnick stated that if a citizen comes to the office to make a complaint, the officer on duty may ask to review the complaint form, in order to determine if the complaint can be addressed immediately, rather than being sent to a supervisor.



## **BPD Investigation**

In September 1999, Lt. Helrich investigated the three complaints filed by Mr. Stetson. Lt. Helrich spoke with the officer who stopped Mr. Stetson on July 17, 1999, either Officer Kim Burbo or Officer Suzanne Grundling, who reported pulling over Mr. Stetson for a minor infraction; she initially thought Mr. Stetson had slurred speech, checked his sobriety, and let him go. Lt. Helrich also spoke with Sgt. Davidson about his encounter with Mr. Stetson. Sgt. Davidson explained that he had a hard time understanding Mr. Stetson, that he finally determined he wanted a complaint form, and then gave it to him. Lt. Helrich determined that neither officer had acted inappropriately, and conducted no further investigation.

Lt. Helrich did not write to Mr. Stetson to inform him of the results of the investigations, and has no record of such contact by anyone else at the BPD. Lt. Helrich stated that he usually forwards the results of investigations to Commander Glen Button to respond to complainants, but he did not have a record of such communication.

## **Attempted Meetings with Lt. Helrich**

After receiving Mr. Stetson's complaints in late July, Lt. Helrich wrote to Mr. Stetson, on behalf of Chief Ennis; the letter is dated July 30, 1999. The letter states:

Dear Mr. Stetson: I received your statements in the mail today. Unfortunately you did not afford me a way to contact you other than by mail. I welcome the opportunity to speak with you regarding your concerns. You may contact me at my office 658-2740, extension 204, and I'll meet with you at your convenience. (Charge, Stetson, Stetson Documents)

Mr. Stetson replied to Lt. Helrich in a letter dated August 11, 1999. In the letter, Mr. Stetson points out that telephone communication is very difficult for him because of his

hearing loss, and states that Lt. Helrich was insensitive to his disability by asking him to call to make an appointment. The letter requests that Lt. Helrich write to make an appointment to meet with him; the letter also states that Mr. Stetson only picks up his mail on Wednesdays and Saturdays. The letter suggests meeting in the evening in a neutral setting, but does not suggest a specific time or place to meet.

Lt. Helrich replied to Mr. Stetson in a letter dated September 3, 1999. The letter apologizes for the delay in responding, and for any insensitivities in the previous letter to Mr. Stetson's disability. In the letter, Lt. Helrich asks Mr. Stetson to set a time and date for a meeting, and states that he will "do everything I can to make it work."

Mr. Stetson replied to Lt. Helrich in a letter dated September 18, 1999 (Monday). The letter suggests meeting at Border's Bookstore in Burlington on Thursday, September 21 at 7:00 p.m. Mr. Stetson acknowledges that Lt. Helrich would not have much notice for the meeting, and asks that if he cannot be there, to write back with an alternate date to meet at Borders at 7:00 p.m. Lt. Helrich received Mr. Stetson's letter of September 18 around 2:00 p.m. on Thursday, September 21, and was unable to meet with Mr. Stetson because he already had plans for that evening. Mr. Stetson went to Border's on September 21 at 6:20 p.m., waited for more than an hour, and determined that Lt. Helrich was not coming.

Mr. Stetson sent another letter to Lt. Helrich, dated September 25, 1999 (Monday). The letter states that he waited at Borders, but did not see anyone whom he could identify as Lt. Helrich. The letter asks Lt. Helrich if he was there, and asks him to meet again the next Thursday, September 28, at the same time and place. Mr. Stetson went to Border's again on September 28 around 7:00, and waited for an hour; again, Lt.

Helrich did not appear. The BPD has no record of this letter in their files, and Lt. Helrich was unaware the Mr. Stetson had sent it.

Lt. Helrich sent a letter to Mr. Stetson; the letter is undated, but has a postmark of September 28, 1999. The letter states that he received the "last letter" (of September 18) too late to inform Mr. Stetson that he was unable to meet on Thursday, but that he is "still anxious" to meet with Mr. Stetson. The letter states that Lt. Helrich will accommodate Mr. Stetson if given sufficient notice. Attached to the letter is a copy of a manual prepared by the Vermont Center for Independent Living entitled "Training Manual on Deaf Culture and Resources for Law Enforcement." Lt. Helrich explains in the letter that he is providing this manual to Mr. Stetson to illustrate the steps being taken by the BPD to improve communication with the deaf and hard of hearing.

Neither Mr. Stetson nor Lt. Helrich has made further attempts to schedule a meeting. Lt. Helrich has not heard from Mr. Stetson since September 1999. Mr. Stetson has received no further response from the BPD to his complaints.

### **VCIL Training**

On September 27, 1999, the Vermont Center for Independent Living conducted a 1 ½ hour training session for the BPD on Deaf Culture and Law Enforcement. The training was intended to sensitize members of the BPD regarding issues of Deaf Culture, and possible conflicts with the deaf and hard of hearing that might arise in law enforcement situations. The training was conducted by VCIL staff member Keri Darling. The training was repeated on October 22, 1999. A total of 17 BPD staff members attended the two trainings, including Lt. Helrich. Participation in the training was not

mandatory for BPD staff, and the BPD does not have plans to repeat the training. The VCIL training was set up in early summer 1999, before Mr. Stetson filed his complaint.

Members of the BPD's own communications and dispatch department attended the VCIL training; the E-911 dispatchers were not invited to the training, which was internal to BPD. All members of the BPD dispatch staff have also been trained to use TTY and the Vermont Interpreter Referral Service, which provides sign and foreign language interpreters. The BPD dispatch department is equipped with TTY.

According to Mr. Stetson, the VCIL training manual has some good suggestions, but is badly put together and does not address his complaint. Mr. Stetson argues that the ideas in the manual are not in logical sequence, that it would be hard for an officer to use in the field, and that it is too large for officers to carry with them for reference.

#### **Submission of Further Complaints to BPD**

Mr. Stetson returned to the BPD Headquarters on November 30, 1999 to get another complaint form, in order to complain about the lack of response to his previous complaints. The telephones still had no volume controls. Mr. Stetson spoke to an officer at the front desk, who asked if he wanted to speak to Lt. Helrich, but Mr. Stetson declined, feeling that neither he nor Lt. Helrich would be prepared for the meeting. The officer on duty gave Mr. Stetson a Sworn Statement form and a guide for filing complaints. After Mr. Stetson left, the officer filled out a Citizen's Complaint form, stating that an unnamed citizen came to make a complaint, and had previously spoken to Lt. Helrich. The form was put in the BPD files.

In December 1999, Mr. Stetson mailed two more complaints to the BPD. The first complaint amends the previous complaint regarding the traffic stop, adding more details to the narrative. The second complaint addresses Mr. Stetson's difficulties in meeting with Lt. Helrich, the lack of subsequent contact from the department, the problems getting more complaint forms, and the continued lack of volume controls on the telephones. Both complaints appear on "Burlington Police Department Sworn Statement" forms, and are notarized and dated December 7, 1999.

### **Installing New Telephone Equipment**

New telephone handsets with volume controls were installed in the BPD reception areas in February 2000. A site inspection of BPD headquarters on January 9, 2001 revealed that both telephones in the entryways had receivers with functional volume controls. The volume controls are located on the inside of the handsets. The location of the controls is not immediately obvious, but the controls are present.

### **Analysis**

9 V.S.A. §4502 of the Vermont Fair Housing and Public Accommodations Act states:

(c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability . . .

(8) [I]f a place of public accommodation has an architectural or communication barrier, in order to comply with this section, the public accommodation shall remove the barrier, if removal is readily achievable . . .

9 V.S.A. §4500 of the Vermont Fair Housing and Public Accommodations Act  
states:

(b) Subsections 4502(b) and (c) of Title 9 shall not be construed to create or impose on governmental entities additional or higher standards, duties or requirements than that imposed by Title II of the Americans with Disabilities Act.

Joseph Stetson charges that the Burlington Police Department discriminated against him because of his hearing loss, by failing to train dispatchers to communicate with the hard of hearing; by failing to provide telephones with volume controls in its reception areas; by responding in a hostile manner when Mr. Stetson attempted to file a complaint at the Police Department office; and by failing to respond to his complaints. Mr. Stetson also raises several issues regarding a police stop on July 17, 1999, problems with a training manual provided to the BPD on deaf culture by the Vermont Center for Independent Living, and the forms he received from the BPD to file a complaint.

The Burlington Police Department admits that the telephones did not have volume controls at the time of Mr. Stetson's complaint, but states that it has since installed such controls. The Department asserts that it has properly trained its dispatchers regarding disability issues. The Department denies treating Mr. Stetson in a hostile manner, and asserts that it repeatedly attempted to contact Mr. Stetson to arrange a meeting.

#### **Failure to Train Dispatchers to Communicate Effectively with the Hard of Hearing**

Mr. Stetson charges that when he called 911 to report a dead animal on July 6, 1999, the dispatcher with whom he spoke talked to him in a rapid, staccato voice, even after Mr. Stetson informed the dispatcher of his hearing impairment. According to Mr.

Stetson, the dispatcher's vocal tone made it impossible for him to understand what was being said, creating a communication barrier.

"Subpart E—Communications" of the Code of Federal Regulations, pertaining to the Americans with Disabilities Act (28 C.F.R. Part 35), states:

§35.160 General

- (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
- (b) (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the public entity.  
(2) In determining what kind of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§35.161 Telecommunications devices for the deaf (TDD's)

Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective communication systems shall be used to communicate with individuals with impaired hearing or speech.

§35.162 Telephone emergency services

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

The comments pertaining to §35.162 regarding emergency 911 services state that all 911 systems are required to have TDD access. This investigation revealed that both Vermont's E-911 system and BPD's dispatch system have such equipment, and that dispatchers are trained in its use.<sup>1</sup>

Mr. Stetson charges that the E-911 dispatcher created a communication barrier by speaking in an inaudible voice. Federal regulations do not address the issue of speech training for dispatchers; since 9 V.S.A. 4500 (b) does not permit imposition of extra requirements on governmental entities not required by ADA, Vermont law does not

---

<sup>1</sup> Mr. Stetson made his call from a public telephone, and so would not have had access to TDD equipment. ADA regulations do not address access to emergency services from public telephones.

require special voice training for emergency dispatchers. The comments on §35.162 address whether dispatchers should have amplification devices available on their telephones to assist hard of hearing callers. The regulations encourage the use of such devices, but do not require them.

Vermont's E-911 system is not operated by the BPD; it could, however, be considered an agent of the BPD. However, while clear diction and amplification devices are desirable goals for emergency dispatchers, they are not required under ADA, and failure to provide them does not constitute illegal discrimination.

#### **Failure to Provide Telephones with Volume Controls**

Under C.F.R. §35.160 (see above), the BPD is required under the ADA to provide auxiliary aids to allow communication access to people with disabilities. The BPD acknowledges that it did not have volume controls on the service phones at its headquarters at the time of Mr. Stetson's complaint, and that such controls would be an appropriate accommodation for Mr. Stetson's hearing impairment.

The BPD installed volume controls on its telephones in February 2000. Mr. Stetson filed his initial complaint about the lack of controls in July 1999, and a second complaint in December 1999. He filed a charge with the Human Rights Commission in January 2000. An inference may be drawn that the BPD installed the equipment in response to the HRC charge rather than in response to Mr. Stetson's two complaints.



## **Hostile Treatment of Mr. Stetson by BPD Officers when Inquiring About Filing a Complaint**

Mr. Stetson charges that officers of the BPD treated him in a hostile manner when he went to file a complaint on July 14, 1999. Mr. Stetson charges that he was ignored, that one officer served another patron before him and then made a rude statement to him. He further alleges that a second officer was difficult to understand, was reluctant to give him a complaint form, and behaved in an intimidating manner by asking Mr. Stetson to fill out the form in his presence, even though the form required notarization.

In general, courts have determined that in order for discourteous behavior from a service provider to rise to the level of discrimination, the behavior must be markedly hostile, and must arise clearly from the complainant's protected status.<sup>2</sup> The actions by BPD officers described by Mr. Stetson, while arguably rude and unpleasant, do not seem to rise to the "markedly hostile" level defined by the courts. Mr. Stetson stated that he did not think that the first officer was aware of his hearing impairment, and that he was unsure whether he mentioned his disability to the second officer. Further, the thick glass that separates officers and patrons at the entryway, and the small speaking hole through which all communication must occur (required to protect officer safety) necessarily make spoken communication difficult, even for hearing patrons. Given Mr. Stetson's disability, inadvertent misunderstanding is even more likely. Thus, granting the validity of Mr. Stetson's report, the problems he cited with BPD officers on July 14, 1999 do not appear to meet the legal standard for discrimination.

---

<sup>2</sup> See Callwood v. Dave & Buster's, Inc. 98 F. Supp.2d 694 (Complainants must show that they were deprived of services or were provided services in a markedly hostile manner to establish a prima facie case of discrimination) and Bobbitt v. Rage, Inc. 19 F.Supp.2d 512 (Plaintiffs failed to establish connection between allegations of poor service and racial animus).

### **Failure to Respond to Mr. Stetson's Complaints**

According to BPD published regulations, the Department must respond to all serious citizen complaints in ninety days or less, and the Department must make a reasonable effort to inform complainants of the outcome of investigations in writing. Mr. Stetson charges that the BPD failed to respond to his complaints.

Mr. Stetson filed three complaints in July 1999. Lt. Helrich acknowledged the receipt of the complaints to Mr. Stetson in writing, in accordance with published regulations. There followed a series of letters between Lt. Helrich and Mr. Stetson attempting to arrange a meeting. These attempts failed, and both parties stopped their attempts to set up a meeting after September 1999. Lt. Helrich conducted an investigation of the complaints in September 1999 and determined that there was no wrongdoing. Mr. Stetson filed two more complaints in December 1999. There is no record of an investigation into these complaints by the BPD. Mr. Stetson received no written notification of the results of any of the investigations, and the BPD has no record of sending Mr. Stetson these results.

Both Lt. Helrich and Mr. Stetson attempted to arrange a meeting. Both agree that their letters crossed in the mail in September 1999, and both acknowledged not pursuing the issue further. Arguably, the BPD had an obligation to pursue meeting with Mr. Stetson further, given his hearing impairment, and the resulting extra complexity of communicating with him. Conversely, Mr. Stetson was offered an opportunity to meet with Lt. Helrich when he visited the BPD headquarters on November 30, 1999, and declined. Also, while some of Mr. Stetson's complaints involved possible civil rights

violations, and so required investigation under BPD regulations, his allegations of rudeness did not necessarily require such investigation under the published policy. More importantly, the BPD failed to follow its published procedure by not informing Mr. Stetson in writing of the results of any of its investigations. Further, there is no evidence that the BPD made any attempt either to investigate or respond to Mr. Stetson's complaints of December 1999. It may be inferred that once the BPD determined that communication with Mr. Stetson was difficult, due to his hearing loss and the fact that he does not use a telephone, it dropped its attempt to address his concerns, and did not follow its procedures either in responding to Mr. Stetson's initial complaints, even in writing, or by conducting an investigation into his subsequent complaints.

#### **Other Issues: Stop by BPD, Problems with VCIL Training Manual, Wrong Complaint Forms**

Mr. Stetson raises three other issues regarding his interactions with the BPD: 1) the behavior of the officer during the traffic stop of July 17, 1999; 2) problems with the VCIL training manual; and 3) the fact that when Mr. Stetson asked for Citizen's Complaint forms, he was instead given Sworn Statement forms.

The Human Rights Commission has, in the past, determined that the action of a police officer in the course of a law enforcement activity does not constitute a public accommodation, and so does not come under the jurisdiction of the HRC statutes. If the Commission decides to follow this precedent, Mr. Stetson's complaint against the officer regarding the traffic stop of July 17, 1999 would not fall within the jurisdiction of this investigation.


Mr. Stetson raises a range of concerns about the training manual provided by the Vermont Center for Independent Living to the BPD on deaf culture issues. Mr. Stetson criticizes both the content and the form of the manual. Mr. Stetson's concerns may be valid, and his suggestions might provide for more effective training. However, this document is an internal communication between BPD and VCIL, and not intended for the public. It was provided to Mr. Stetson only as a courtesy. Since the manual itself is not a public accommodation, any possible flaws in the manual do not by themselves constitute denial of a public accommodation or failure to provide a reasonable accommodation for Mr. Stetson's disability, and so do not fall within HRC jurisdiction.

The final matter concerns the fact that, on two separate occasions, when Mr. Stetson requested Citizen's Complaint forms from the BPD, he was instead given Sworn Statement forms. The BPD's protocol specifically requires the use of the Complaint form, and requires that these be available to the public at all times. Lt. Helrich stated that the front desk sometimes runs out of forms, and that the Sworn Statement form might be given out to provide an opportunity for a more detailed complaint than the more general Complaint form. If the BPD had been following its procedures to ensure that Complaint forms were available at all times, it seems unlikely that they would have been out of these forms both times Mr. Stetson went to request them, several months apart. And notably, on November 30, 1999, immediately after Mr. Stetson asked for a Complaint form and was given the Sworn Statement form instead, the officer on duty filled out a Citizen's Complaint form reporting that Mr. Stetson had been at the station to file a complaint. The Complaint form must have been available, or easily obtainable. Mr. Stetson points out that the Sworn Statement form contains many questions that are inappropriate to a

complaint, is more difficult to fill out, and requires notarization, which is an extra burden not intended by the BPD protocol for filing a complaint. On the other hand, the BPD processed Mr. Stetson's Sworn Statements as complaints, even though they were not on the Complaint Form (though, as noted above, it failed to notify Mr. Stetson of the outcome of the investigations). It is troubling that the BPD did not follow its protocol for Citizen's Complaints on the two occasions when Mr. Stetson went to the BPD. There is not, however, enough evidence to show that by giving Mr. Stetson the wrong forms the BPD was discriminating against him because of his disability, or failing to provide him with a public accommodation.

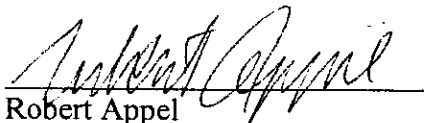
In summary, this investigation finds that the BPD did not have volume controls on its internal telephones at the time of Mr. Stetson's visits to the BPD headquarters in 1999, but that such controls were subsequently installed. It also finds that while the BPD made some effort to meet with Mr. Stetson following his complaints, the BPD failed to provide Mr. Stetson with written notice of its investigations into his complaints, apparently due (at least in part) to the greater effort required to communicate with Mr. Stetson based on his disability. The investigation finds that the other issues Mr. Stetson raises either do not fall under the HRC's jurisdiction, or do not meet the legal definitions of discrimination or failure to provide a reasonable accommodation.

PRELIMINARY RECOMMENDATION: This investigative report recommends that the Human Rights Commission find that there are **reasonable grounds** to believe that the Burlington Police Department discriminated against Mr. Stetson by not providing accessible telephones at the time of his complaint. However, such telephones have subsequently been installed. This report also recommends that the Human Rights Commission find reasonable grounds to believe that the Burlington Police Department discriminated against Mr. Stetson by failing to respond to his complaints according to its published procedures.



Sam Abel-Palmer  
Investigator

APPROVED:



Robert Appel  
Executive Director

Date

11/16/01

HUMAN RIGHTS COMMISSION

Joseph Stetson,  
Charging Party, )  
 )  
v. ) Charge No.: PA00-0017  
 )  
Burlington Police Department, )  
Respondent. )

FINAL DETERMINATION

Pursuant to 9 V.S.A. §4554, the Vermont Human Rights Commission enters the following  
Order:

1 The following vote was taken on a motion to find that there are  
reasonable grounds to believe that the Burlington Police Department, the Respondent  
discriminated against Joseph Stetson on the basis of his disability, by failing to provide accessible  
telephones at the time of his complaint, in violation of 9 V.S.A. §4502(c)(8) of the Vermont Fair  
Housing and Public Accommodations Act.

Erica Garfin, Chair For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Ellen Burgess For \_\_\_ Against \_\_\_ Absent x Recused \_\_\_

Kevin Christie For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Christine Hart For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Charles Kletecka For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Entry: Reasonable ground x Motion failed \_\_\_

As the Commission has found above, that there are reasonable grounds  
to believe that the Burlington Police Department, the Respondent discriminated against Mr.  
Stetson, the Charging Party based on his disability by failing to provide accessible telephones at

the time of his complaint, in violation of 9 V.S.A. §4502(c)(8) of the Vermont Fair Housing and Public Accommodations Act. A final attempt to resolve this reasonable grounds finding, through settlement shall be completed by **July 15, 2002**.

2. The following vote was taken on a motion to find that there are no reasonable grounds to believe that the Burlington Police Department, the Respondent violated Vermont's Fair Housing and Public Accommodations Act, by failing to respond to Mr. Stetson's complaints according to its published procedures, in violation of 9 V.S.A. §4502(c)(8) of the Vermont Fair Housing and Public Accommodations Act.

Erica Garfin, Chair For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Ellen Burgess For \_\_\_ Against \_\_\_ Absent x Recused \_\_\_

Kevin Christie For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Christine Hart For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Charles Kletecka For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Entry: No Reasonable ground x Motion failed \_\_\_

3. The following vote was taken on a motion to find that there are no reasonable grounds to believe that the Burlington Police Department, the Respondent violated Vermont's Fair housing and Public Accommodations Act, by treating Mr. Stetson in a hostile manner when he went to the Burlington Police Department, in violation of 9 V.S.A. §4502(c)(8) of the Vermont Fair Housing and Public Accommodations Act.

Erica Garfin, Chair For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Ellen Burgess For \_\_\_ Against \_\_\_ Absent x Recused \_\_\_

Kevin Christie For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Christine Hart For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Charles Kletecka For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Entry: No Reasonable ground x Motion failed \_\_\_



4. The following vote was taken on a motion to find that there are no reasonable grounds to believe that the Burlington Police Department, the Respondent, violated Vermont's Fair Housing and Public Accommodations Act, by failing to train dispatchers to communicate with people who are hard of hearing in violation of 9 V.S.A. §4502(c)(8) of the Vermont Fair Housing and Public Accommodations Act.

Erica Garfin, Chair For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Ellen Burgess For \_\_\_ Against \_\_\_ Absent x Recused \_\_\_

Kevin Christie For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Christine Hart For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Charles Kletecka For x Against \_\_\_ Absent \_\_\_ Recused \_\_\_

Entry: No Reasonable ground x Motion failed \_\_\_

As the Commission has found, in Paragraphs 2, 3, and 4 above that there are no reasonable grounds to believe that the Burlington Police Department, the Respondent violated Vermont's Fair Housing and Public Accommodations Act based on Mr. Stetson's disability, those portions of Charge No. PA00-0017 are dismissed.

Dated at Montpelier, Vermont this 15<sup>th</sup> day of January , 2002.

HUMAN RIGHTS COMMISSION

BY: Erica Garfin  
Erica Garfin, Chair

- absent -

Ellen Burgess  
Ellen Burgess

Kevin B. Christie  
Kevin Christie

Christine H. Hart  
Christine Hart

Charles Kletecka  
Charles Kletecka